

SUPREME COURT OF NEVADA

Great Basin Water Network v. State Engineer

222 P.3d 665 (Nev. 2010) · No. No. 49718 · Decided January 28, 2010

SUMMARY

The Supreme Court of Nevada held that the State Engineer violated his statutory duty by failing to act within one year on Southern Nevada Water Authority's 1989 groundwater appropriation applications. The court concluded that a 2003 amendment to NRS 533.370 did not apply retroactively because the applications were not "pending" within the meaning of the amendment. The court reversed the district court and remanded to determine whether new applications were required or whether the State Engineer had to re-notice the existing applications and reopen the protest period.

CASE DETAILS

COURT	Supreme Court of Nevada
WRITING FOR THE COURT	Hardesty, J.; Parraguire, C.J.; Douglas, J.; Cherry, J.; Saitta, J.; Gibbons, J.; Pickering, J.
JURISDICTION	Nevada
DECIDED	January 28, 2010
DOCKET	No. 49718
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellants sought judicial review of the State Engineer's denial of their petition to re-notice Southern Nevada Water Authority's remaining 1989 groundwater appropriation applications and reopen the protest period. The district court denied the petition, and appellants appealed.
STANDARD OF REVIEW	Statutory construction is reviewed de novo. The district court's judicial-review decision was also reviewed for error in its interpretation of NRS 533.370.
PRECEDENTIAL VALUE	Published, precedential Nevada Supreme Court opinion decided en banc.
PARTIES	Great Basin Water Network, Defenders of Wildlife, Edgar Alder, Clark W. Miles, Raymond E. Timm, Theodore Stazeski, Sheldon M. Edwards, Kathryn Hill, Kenneth F. Hill, Scotty Heer, Beth B. Anderson, Susan L. Geary, Donald W. Geary, Robert Ewing, Pamela

Jensen, Bruce Jensen, Renee A. Alder, Robert J. Nickerson, Joyce B. Nickerson, Edward J. Weisbrot, Alexander Rose, Robert N. Kranovich, Pamela M. Pedrini, Rick Havenstrite, Terrence P. Marasco, Bryan Hamilton, John B. Woodyard, II, Laurie E. Cruikshank, Donald Foss, Selena L. Weaver, Mary E. Collins, Candi A. Ashby, Sally L. Gust, Bruce Ashby, Daniel Maes, Robert N. Marcum, Tara Foster, Donald A. Duff, Elisabeth A. Douglass, Jamie Deneris, Nomi Martin-Sheppard, Veronica F. Douglass, Abigail C. Johnson, Marie Jordan, James Jordan, Rutherford Day, The Great Basin Chapter of Trout Unlimited, Wilda Garber, The Utah Council of Trout Unlimited, Pandora Wilson, Parker Damon, Carol Damon, Anna Heckethorn, Deborah Torvinen v. Tracy Taylor, in his official capacity as the Nevada State Engineer, The State of Nevada Department of Conservation and Natural Resources, Division of Water Resources, The Southern Nevada Water Authority

TOPICS

administrative law judicial review of agency action statutory interpretation legislative intent
appellate procedure

PRACTICE AREAS

administrative law water law environmental law statutory interpretation judicial review of agency action

QUESTIONS PRESENTED

1. Whether the 2003 amendment to NRS 533.370 applied retroactively to Southern Nevada Water Authority's 1989 groundwater appropriation applications.
2. Whether the 1989 applications were pending on July 1, 2003, within the meaning of the 2003 amendment.
3. Whether the State Engineer violated the statutory duty under the 1989 version of NRS 533.370(2) by failing to act on the applications within one year after the final protest date.
4. What remedy was appropriate for the State Engineer's failure to comply with the statutory timing requirement.

HOLDINGS

1. The State Engineer violated his mandatory statutory duty by failing to approve or reject the 1989 applications within one year after the final protest date because the record showed neither the written authorization required for postponement nor an applicable water-supply study or court action.
2. The 2003 amendment did not apply retroactively to the 1989 applications because they were not 'pending' on July 1, 2003; an application was pending only if the one-year period for State Engineer action had not yet elapsed.

3. The State Engineer's failure to comply with the one-year deadline did not automatically approve or reject the applications and did not require voiding the applications or barring further agency action. The proper remedy required further proceedings to determine whether new applications were necessary or whether the State Engineer had to re-notice the applications and reopen the protest period.

KEY QUOTATIONS

"We conclude that "pending" applications are those that were filed within one year prior to the enactment of the 2003 amendment." (667)

"We therefore conclude that the Legislature intended to designate as "pending" on July 1, 2003, only those applications in which the one-year period under NRS 533.370(2) had not arrived." (672)

"We instruct the court to undertake the necessary proceedings to adjudicate the proper remedy, namely whether SNWA is required to file new applications or whether the State Engineer is required to re-notice and reopen the protest period." (672)

FACTUAL BACKGROUND

In 1989, the Las Vegas Valley Water Department filed approximately 146 applications to appropriate groundwater for transfer to the greater Las Vegas area; Southern Nevada Water Authority later acquired the applications. More than 830 protests were filed, but the State Engineer did not act on the 34 applications at issue within one year after the protest period closed, and the record did not show written authorization for postponement, an applicable water-supply study, or a pending court action. By 2005 and 2006, the State Engineer began preparing hearings after a sixteen-year lapse, but many notices were returned undelivered and the protest period was not reopened.

PROCEDURAL HISTORY

In 1989, the Las Vegas Valley Water Department filed approximately 146 groundwater appropriation applications, later acquired by the Southern Nevada Water Authority. More than 830 protests were filed, but the State Engineer did not rule on the 34 applications at issue within the one-year period required by the 1989 version of NRS 533.370(2). After the State Engineer denied appellants' 2006 request for re-notice and reopening of the protest period, the district court denied judicial review. The Nevada Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court must undertake the necessary proceedings to determine whether SNWA must file new groundwater appropriation applications or whether the State Engineer must re-notice SNWA's 1989 applications and reopen the period during which appellants may file protests.

CASES CITED

- *Sonia F. v. Dist. Ct.*, 125 Nev. 38, 215 P.3d 705 (2009)
- *Blaine Equip. Co. v. State, Purchasing Div.*, 122 Nev. 860, 867, 138 P.3d 820, 824 (2006)
- *Adkins v. Oppio*, 105 Nev. 34, 37, 769 P.2d 62, 64 (1989)
- *Bacher v. State Engineer*, 122 Nev. 1110, 1117-18, 146 P.3d 793, 798 (2006)
- *Attorney General v. Nevada Tax Comm'n*, 124 Nev. ___, 181 P.3d 675, 681 (2008)
- *Karcher Firestopping v. Meadow Valley Contr.*, 125 Nev. ___, 204 P.3d 1262, 1263 (2009)
- *Allstate Insurance Co. v. Fackett*, 125 Nev. ___, 206 P.3d 572, 576 (2009)
- *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428-29, 102 S. Ct. 1148, 71 L. Ed. 2d 265 (1982)

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